

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS GONZALEZ-GONZALEZ,

Defendant.

No. 2:10-CR-02095-EFS-1

**ORDER DENYING RELIEF UNDER 18
U.S.C. § 3582(C) AND/OR 28 U.S.C.
§ 2255**

Before the Court, without oral argument, is Defendant Jesus Gonzalez-Gonzalez' Untitled Motion, ECF No. 150, in which he seeks a sentence reduction, citing Amendment 782 to the United States Sentencing Commission Guidelines Manual ("Guidelines"). Benjamin Seal, appearing on behalf of the United States Attorney's Office, filed a response in opposition, ECF No. 154. Having reviewed the pleadings and the file in this matter, the Court is fully informed and finds Mr. Gonzalez-Gonzalez is not eligible for the relief sought.

In 2011, Mr. Gonzalez-Gonzalez admitted via plea agreement to manufacturing 8850 marijuana plants.¹ ECF No. 102 at 8. At the time, his Base Offense Level, as well as the adjusted Total Offense Level, was calculated to be 30. ECF No. 115. Given this offense level, and

¹ The Guidelines hold 8850 marijuana plants as being equivalent to no less than 885 KG of marijuana. See Application Note E to USSG 2d1.1.

1 Mr. Gonzalez-Gonzalez' Criminal History Category of I, the Guidelines
2 in effect at the time recommended a sentence of imprisonment between
3 157 and 181 months. ECF Nos. 124. Nonetheless, on December 9, 2011,
4 the Court accepted a plea agreement pursuant to Federal Rule of Criminal
5 Procedure 11(c)(1)(C), and sentenced Mr. Gonzalez-Gonzalez to 72 months
6 imprisonment. ECF No. 123.

7 **I. SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(C)(2)**

8 In November 2014, Amendment 782 to the Guidelines implemented a
9 two-level reduction for offenses based on the drug quantity tables. See
10 USSG App. C, Amend. 782; see also USSG § 2D1.1(c) (2015) (incorporating
11 Amendment 782's changes). Although 18 U.S.C. § 3582(c)(2) generally
12 allows a sentencing court to reduce the term of imprisonment for a
13 defendant who has been sentenced based on a range that has subsequently
14 been lowered by an amendment to the Guidelines, this power is subject
15 to an important limitation. See USSG § 1B1.10. Even when the relevant
16 Guidelines range has subsequently been lowered, the Court "shall not"
17 reduce a defendant's sentence such that it would fall below the amended
18 range.² See USSG § 1B1.10(b)(2)(A); see also *United States v. Davis*, 739
19 F.3d 1222, 1225-26 (9th Cir. 2014) (upholding the Sentencing
20 Commission's low-end-of-Guideline-range limitation on retroactive
21 sentencing reductions); *United States v. Tercero*, 734 F.3d 979, 982-84
22 (9th Cir. 2013) (same).

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25 ² This limitation does not necessarily apply if the defendant provided
26 substantial assistance to authorities, and was therefore sentenced below the
then-applicable guideline range. See USSG § 1B1.10(b)(2)(B). Mr. Gonzalez-
Gonzalez, however, provided no such assistance.

1 Here, after taking into account the two-level reduction, Mr.
2 Gonzalez-Gonzalez's offense level would be reduced to 28, and he would
3 retain his Criminal History Category of I. Even so, the Guidelines
4 would still recommend imprisonment for a term of 78-97 months. See USSG
5 Sentencing Table (2011). Because the lowest end of that amended range
6 is greater than Mr. Gonzalez-Gonzalez' original sentence, the Court
7 finds he is not eligible for a sentence reduction under 18 U.S.C. §
8 3582(c)(2).

9 **II. RELIEF UNDER 28 U.S.C. § 2255 (JOHNSON)**

10 Though Mr. Gonzalez-Gonzalez never again mentions the case – or
11 presents any related arguments – his Motion includes a heading,
12 "JOH[N]SON V. UNITED STATES," immediately after the caption. ECF No.
13 150. As such, the Court briefly addresses why it denies relief without
14 reaching the merits of the issue.

15 In *Johnson v. United States*, the Supreme Court held that an
16 increased sentence under the residual clause of the Armed Career
17 Criminal Act of 1984 violated the Constitution's guarantee of due
18 process. 135 S. Ct. 2551, 2563 (2015). Under the Act's residual clause,
19 "violent felony" was too vaguely defined, because it included any felony
20 that "involves conduct that presents a serious potential risk of
21 physical injury to another." U.S.C. § 924(e)(2)(B); see also *Johnson*,
22 135 S. Ct. at 2557 ("We are convinced that the indeterminacy of the
23 wide-ranging inquiry required by the residual clause both denies fair
24 notice to defendants and invites arbitrary enforcement by judges.").
25 Since that decision, numerous prisoners have used *Johnson* to
26

1 collaterally attack their sentences under 28 U.S.C. § 2255(a). *See Welch*
2 *v. United States*, 136 S. Ct. 1257, 1268 (2016) (Thomas, J., dissenting).

3 Mr. Gonzalez-Gonzalez' Motion, however, is not a cognizable claim
4 under 28 U.S.C. § 2255. In September 2012, Mr. Gonzalez-Gonzalez filed
5 a "Motion to Vacate, Set Aside, or a Correction of Sentence Pursuant to
6 28 U.S.C. § 2255," ECF No. 127, which the Court denied, ECF No. 130.
7 Because of this prior motion, Mr. Gonzalez-Gonzalez must seek, and
8 obtain, certification by the Ninth Circuit Court of Appeals before this
9 Court can even consider another motion for relief under § 2255. *See* 28
10 U.S.C. § 2255(h) ("A second or successive motion must be certified as
11 provided in section 2244 by a panel of the appropriate court of appeals
12"). Mr. Gonzalez-Gonzalez' Motion lacks the requisite
13 certification.

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. Defendant's Untitled Motion, **ECF No. 150**, is **DENIED**.

16 2. This file shall be **CLOSED**.

17 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
18 Order and provide copies to Defendant, all counsel, and the U.S.
19 Probation Office.

20 **DATED** this 15th day of July 2016.

21 s/Edward F. Shea

22 EDWARD F. SHEA

23 Senior United States District Judge
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